

DISTRICT COURT JUDGE BENJAMIN H. SETTLE  
MAGISTRATE JUDGE KAREN L. STROMBOM

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA**

THOMAS W.S. RICHEY,

Plaintiff,

v.

D. DAHNE,

Defendant.

NO. 3:12-CV-05060-BHS-KLS

DEFENDANT'S REPLY TO  
PLAINTIFF'S RESPONSE TO  
DEFENDANT'S MOTION FOR  
RELIEF FROM ORDER

Defendant, DENNIS DAHNE, by and through his attorneys of record, ROBERT W. FERGUSON, Attorney General, and HALEY BEACH, Assistant Attorney General, respectfully submits the following Reply to Plaintiff's Response to Defendant's Motion for Relief from an Order.

**I. REPLY**

Plaintiff Thomas Richey does not seem to contest Defendant's legal arguments for dismissal, but rather simply argues that he lied in the letter to his wife. Richey maintains that he decided to plant this "lie" in his letter because he believed his outgoing mail to his wife was not being sent. Richey's version of events is implausible on its face and belied by the evidence in the record, and potentially by additional evidence this Court could order admitted, including Richey's recorded phone calls that Defendant has moved to admit in a separately filed motion. The Court should consider the evidence, Richey's implausible version of events, and Richey's history of frivolous and malicious litigation and grant

1 Defendant's motion, or hold an evidentiary hearing to make a determination as to whether  
 2 Richey perpetrated a fraud upon the Court.

3 **A. Richey's Version of Events is Implausible**

4 Richey would have this Court believe that, in an effort to "bait and antagonize" prison  
 5 staff, he decided to admit that he had fabricated the facts underlying his right-to-petition  
 6 claim in this lawsuit. Of all the many things that might be thought to antagonize prison staff,  
 7 it seems odd that Richey would land on a detailed admission of his fabrication of a lawsuit  
 8 that these individuals more than likely knew nothing about. He also includes this supposed  
 9 "bait" directly under a paragraph discussing an illicit scheme to perform services for "two  
 10 more potential clients," one of whom was going to solicit "dosh"<sup>1</sup> from a relative and one of  
 11 whom was going to pay Richey "a combo of store and street dosh." Declaration of Jack  
 12 Warner, Exhibit 1. It seems odd that Richey would choose to insert false information for the  
 13 Department of Corrections (DOC) to read right below an admission of an illicit prison  
 14 bartering scheme. It also seems unlikely that he would do so at a time when the lawsuit in  
 15 question is still pending, and would include information about other money-making litigation  
 16 schemes that are still pending, as well.

17 Additionally, staff reviewed a number of letters at this time that included a variety of  
 18 dishonest money-making schemes, some of which involved litigation-related schemes and  
 19 some of which involved other schemes. Declaration of George Gilbert, ¶ 4, Exhibit 1. For  
 20 example, Richey discusses doing legal work for other inmates in exchange for payment of  
 21 commissary credits or other goods, a scheme to pressure a disciplinary hearing officer to  
 22 dismiss an infraction and reduce other disciplinary sanctions, a plan to solicit donations of  
 23 clothing and food to then sell for money, a plan to continually submit grievances with  
 24 disrespectful language prior to the Supreme Court's ruling in this case, and a plan for his  
 25 wife to pose as a literary agent in an effort to get him a book deal. Gilbert Decl., Exhibit 1.

26 <sup>1</sup> Context suggests this term is slang or code for money.

1 He also sends a letter to another family member or friend, Elaine, in which he states, “[l]ately,  
 2 I’ve been submitting as many grievances as possible in an effort to see them dismissed so I  
 3 can sue. . . . This is really a money-making opportunity. Of course, they [don’t know] this.”  
 4 Gilbert Decl., Exhibit 1, at 5. It is unlikely that if Richey believed DOC was so closely  
 5 monitoring his mail, he would include information about his scheme that relies on DOC staff  
 6 not knowing about his scheme. He also told Elaine, in a separate letter, about the Supreme  
 7 Court denying review in this case, and stated: “Now it’s all about settling my cases. I’ve this  
 8 initial case, then there’s the big one with 50 grievances, and I racked another seven  
 9 grievances here . . . . I don’t know how much I’ll settle for, but I’d like to get anywhere from  
 10 30 to 50k.” Gilbert Decl., Exhibit 1, at 9. Again, it seems rather unlikely that Richey would  
 11 include his settlement goals for active cases, including a dollar amount, if he believed  
 12 mailroom staff were so keenly interested in his litigation activities. This letter was dated May  
 13 15, 2019, Gilbert Decl., Exhibit 1, at 8, two days after the Supreme Court denied review, and  
 14 presumably after Richey called his wife “to share news about winning” this case and she  
 15 supposedly informed him that she had not received his letters. ECF No. 97, at 7.

16 Additionally, Monroe Correctional Complex (MCC) mailroom staff reviewed their  
 17 files and they indicate that Richey did not have any outgoing mail rejected or withheld from  
 18 mailing during that time. Declaration of Melinda Tuggle, ¶ 3. The investigator also indicates  
 19 that he received copies of the reviewed mail rather than originals. Gilbert Decl., ¶ 4. The  
 20 investigator receives copies when the outgoing mail is reviewed and copied for investigation,  
 21 but still allowed to be sent out. Richey states that he learned of his wife supposedly not  
 22 receiving his letters when he called her to inform her about the Supreme Court decision  
 23 denying review. DOC has Richey’s calls recorded and available for review. Gilbert Decl., ¶  
 24 3. The Court should grant Defendant’s separately filed motion to admit the contents of that  
 25 phone call to confirm or refute that claim.  
 26

Richey also states that he would not have lied in his grievance to Dennis Dahne back in November 2011 because he would have assumed it would have been investigated and the lie revealed, exposing him to potential disciplinary action, and he could never have guessed that the grievance coordinator would find his language unacceptable and refuse to process the grievance. ECF No. 97, at 2. But Richey's history disproves this claim, as well. In *Richey v. Thaut*, No. C11-5680-RBL-KLS, 2012 WL 527521 (W.D. Wash. Feb 16, 2012), Richey filed a civil rights complaint against Stafford Creek Correction Center grievance coordinator Douglas Thaut, over Thaut's handling of one of Richey's grievances. That grievance claimed that Richey was denied a shower by an "extremely obese female Hispanic guard" and opined as to whether there was "a fat farm that raises all the obese women that Stafford Creek hires." See *Richey v. Thaut*, No. C11-5680-RBL-KLS, Dkt. 45-2, at 2. On August 2, 2011, Thaut advised Richey to rewrite the grievance and leave out that and other objectionable language. *Id.* So when Richey filed the grievance underlying this claim in November 2011, he would have known that Stafford Creek was at that time refusing to process grievances containing abusive language. Richey states in his letter to his wife that he read an old case that he used as inspiration for this lawsuit, which makes sense given the similarities in the grievance underlying this case to the grievance at issue in *Bradley v. Hall*, 64 F.3d 1276 (9th Cir. 1995).<sup>2</sup> *Bradley* involved a grievance that stated, among other things: "Her [the guard's] actions shows her misuse of her authority and her psychological disorder needs attention. Then you wonder why things happen like that guard getting beat down? I suggest you talk to this woman and have her act professionally instead of like a child. [sic]." *Id.* at 1278. Richey's grievance stated, in relevant part: "It is no wonder why guards are slapped and strangled by some prisoners. When guards like this obese female Hispanic guard abuse their position as much as they abuse their calorie intake, it can make prisoners less civilized than myself to [sic] resort to violence." ECF No. 52-2, at 61. In short, Richey's claim that he

---

<sup>2</sup> Overruled by *Shaw v. Murphy*, 532 U.S. 223, 230 n.2 (2001).

1 would not have submitted an untrue grievance containing disrespectful language because he  
 2 would have believed that it would be investigated and because he could not have predicted  
 3 that it would be rejected is belied by his history. Additionally, as he lays out in his letters, if  
 4 staff had accepted his grievance containing the disrespectful language, he would have simply  
 5 withdrawn the grievance. *See* Gilbert Decl., Exhibit 1, at 5. Richey knew the grievance would  
 6 be rejected and he hoped that his grievance's similarity to the grievance in *Bradley* would  
 7 support a First Amendment claim. In actuality, Richey's grievance and arguments in this  
 8 case were all built on Richey's false claim that his grievance was about a particular staff  
 9 member whom he could not otherwise identify because he did not know her name. Had the  
 10 grievance been accepted, Richey would have simply withdrawn it and moved on to his next  
 11 scheme.

12 **B. Richey's Allegations Against DOC Staff and Defense Counsel Are Specious and**  
 13 **Unsupported**

14 Richey's claims against DOC staff and defense counsel are based on his own speculation  
 15 and unfounded accusations. MCC monitors outgoing mail in accordance with DOC policy and  
 16 state law. *See, e.g.*, Wash. Admin. Code 137-48-030(1) ("All mail intended for or to be sent by  
 17 an inmate, excluding legal mail discussed in subsection (3) of this section, may be inspected  
 18 at any time by the staff designated by the superintendent or his/her designee(s)."). Despite  
 19 his lengthy history in DOC prisons, Richey does not have personal knowledge or information as  
 20 to how prison investigations are conducted or who might be involved in particular investigations  
 21 within MCC. The mailroom staff and investigator acted in accordance with their job duties and  
 22 the applicable DOC policies to review and investigate potential violations of rules and laws  
 23 evidenced by Richey's outgoing no-legal mail. *See* Tuggle Decl., ¶ 3; Gilbert Decl., ¶ 4. His  
 24 baseless accusations of anything beyond him breaking the rules and getting caught are unfounded  
 25 speculation and are not entitled to any weight or consideration.  
 26

**C. Richey's Unnoted Motions**

Richey appears to have filed a motion to amend and a motion to suppress, neither of which was noted for the Court's consideration. Should the Court note such motions or request a response from Defendants, Defendant will file responses within the applicable timeframes.

**D. The Court Should Dismiss This Matter**

Defendant has presented competent evidence that Richey has fabricated the facts underlying his only surviving claim in this matter. Richey made up his grievance and therefore had no non-frivolous issue for which to petition for redress. Richey made knowingly false representations to this Court, and others, repeatedly. Richey's attempts to cobble together an explanation for this admission are unpersuasive and inconsistent with the facts known to the parties and the Court. Richey has a long history of filing frivolous and malicious litigation in the federal courts. Richey has at least seven qualifying "strikes" under 28 U.S.C. § 1915(e)(2) and (g). *See Richey v. Thaut*, No. C11-5755 BHS, 2012 WL 1752322 (W.D. Wash. May 16, 2012); *Richey v. Thaut*, No. 12-35632 (9th Cir. Oct. 17, 2012); *Richey v. Glebe*, No. C14 5268, 2014 WL 2116458 (W.D. Wash. May 21, 2014); *Richey v. Sullivan*, No. C14-5050 BHS, 2014 WL 3928014 (W.D. Wash. Aug. 12, 2014) (dismissed as frivolous *and* malicious); *Richey v. Dean*, No. C14 5071 BJR-JRC, 2014 WL 2765733 (W.D. Wash. June 18, 2014); *Richey v. Buile*, No. 12-00528 (W.D. Wash. 2012); *Richey v. Glebe*, Grays Harbor Superior Court No. 13 2-00474-3 (2014). Richey's correspondence demonstrates that his litigation activity is driven by schemes intended to make money or antagonize DOC staff. The federal courts do not have to tolerate such misconduct, particularly in a case that never should have been filed and which has consumed the dockets of multiple federal courts for seven years. "[C]ourts are not obliged to be a playground where prisoners with nothing better to do continuously file frivolous claims." *Rodriguez v. Cook*, 169 F.3d 1176, 1180 (9th Cir. 1999). A district court may dismiss a complaint as malicious if it is plainly abusive of the judicial process. *Pittman v. Moore*, 980 F.2d 994, 995 (5th Cir. 1993); *Crisafi v. Holland*, 655 F.2d 1305, 1309 (D.C. Cir. 1981). The Court should

1 exercise its inherent powers and its powers under the civil rules to dismiss this fraudulent and  
 2 frivolous action.

## 3 II. CONCLUSION

4 Because a knowing falsehood was the central issue of Richey's complaint, the Court  
 5 should rule that his conduct was a fraud upon the Court and dismiss this action pursuant to its  
 6 inherent authority, or vacate its previous order granting Richey summary judgment on his right-  
 7 to-petition claim pursuant to Fed. R. Civ. P. 60(b)(3) and (d)(1). In the alternative, the Court  
 8 should dismiss this matter pursuant to Fed. R. Civ. P. 41(b) because Richey has failed to comply  
 9 with the federal rules. Richey never should have filed this lawsuit and the Court should dismiss  
 10 it. If the Court believes there are disputed issues of fact that are necessary to decide to resolve  
 11 this motion, it should grant Defendant's separately filed motion to submit the contents of  
 12 Richey's phone calls for this Court's consideration, or should hold an evidentiary hearing on this  
 13 issue and consider such evidence.

14 RESPECTFULLY SUBMITTED this 21st day of June, 2019.

15 ROBERT W. FERGUSON  
 16 Attorney General

17 s/ Haley Beach  
 18 HALEY BEACH, WSBA #44731  
 19 Assistant Attorney General  
 20 Corrections Division  
 21 P.O. Box 40116  
 22 Olympia, WA 98504-0116  
 23 (360) 586-1445  
 24 HaleyB@atg.wa.gov  
 25  
 26

**CERTIFICATE OF SERVICE**

I certify that on the date below I caused to be electronically filed the DEFENDANT'S  
REPLY TO PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION FOR RELIEF FROM  
ORDER with the Clerk of the Court using the CM/ECF system and I hereby certify that I have  
mailed a copy of the document through United States Postal Service to the following non  
CM/ECF participant:

THOMAS W.S. RICHEY, DOC #929444  
MONROE CORRECTIONAL COMPLEX – WSR  
PO BOX 777  
MOROE WA 98272-0777

[docmccinmatefederal@DOC1.WA.GOV](mailto:docmccinmatefederal@DOC1.WA.GOV)

I declare under penalty of perjury under the laws of the United States of America that the  
foregoing is true and correct.

EXECUTED this 21st day of June, 2019, at Olympia, Washington.

s/ Cherrie Melby  
CHERRIE MELBY  
Legal Assistant  
Corrections Division  
PO Box 40116  
Olympia, WA 98504-0116  
(360) 586-1445  
Cherrie.Melby@atg.wa.gov